DOCUMENT RESUME

ED 310 453 CS 506 774

AUTHOR Starr, Michael; Atkin, David
TITLE The Department of Communications: A Plan and Policy for the Abolition of the Federal Communications Commission.
PUB DATE Aug 89
NOTE 27p.; Paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication (72nd, Washington, DC, August 10-13, 1989).
PUB TYPE Speeches/Conference Papers (150) -- Viewpoints (120) -- Reports - Evaluative/Feasibility (142)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Broadcast Industry; Federal Government; *Federal Regulation; *Governmental Structure; Government Role; Mass Media Role; Models; *Public Policy; Technological Advancement; *Telecommunications
IDENTIFIERS *Federal Communications Commission; Media Government Relationship; Public Interest

ABSTRACT

This paper, maintaining that few areas of federal oversight have been as inconsistently addressed as that involving the regulation of broadcast and wire communication, presents and evaluates a proposal to abolish the Federal Communications Commission (FCC) and National Telecommunications and Information Administration in favor of a cabinet-level Department of Communications. After a section giving background information and reviewing salient shortcomings in the FCC regulation of the telecommunication press, the following section outlines an alternative regulatory model (a Department of Communications), discussing evaluative criteria, steps toward implementation, and the benefits of such a department. The next section then discusses likely reactions to such a proposal from the courts, citizens' groups, the FCC, Congress, the White House, and the broadcasting industry, concluding in the final section that a coalition of Congress, selected industry groups, the courts, and citizens' groups could effect the implementation of a Cabinet-level department, prevailing over the FCC's opposition. Thirty-eight references conclude the paper. (SR)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED310453

THE DEPARTMENT OF COMMUNICATIONS: A PLAN AND POLICY FOR THE ABOLITION OF THE FEDERAL COMMUNICATIONS COMMISSION

by

Michael Starr, JD, LLM.

and

David Atkin, Ph.D.

Department of Radio-Television
Southern Illinois University
Carbondale, IL 62901
(618) 536-7555

Paper presented to the Radio-Television Journalism division, Association for Education in Journalism & Mass Communication, annual conference, Washington D.C. August 9-13, 1989.

CS 506 774

BEST COPY AVAILABLE

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Michael Starr;
David Atkin
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☐ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

THE DEPARTMENT OF COMMUNICATIONS: A PLAN AND POLICY FOR THE ABOLITION OF THE FEDERAL COMMUNICATIONS COMMISSION

Few areas of federal oversight have been as inconsistently addressed as that involving the regulation of broadcast and wire communication. Action in this realm has been all too often governed by political rather social or economic imperatives. (Krasnow, Longley & Terry, 1982). Many, no doubt, accept this situation as a necessary element of democratic decision-making. The deregulatory fervor of the 1980s could thus be seen as part of a long term process of political redefinition.

It may be that consistency and planning are not to be expected in an industry regulated by politicians and political appointees. But, the uncoordinated policymaking bodies, like the federal deficit, present something of a political timebomb. The consequences of regulatory neglect in this area will affect more than the traditional broadcast constituency of the Federal Communications Commission (FCC). For, as traditional distinctions between communications technologies continue to blur, and the information economy they define expands, the need for a coherent national policy in this area becomes critical. This paper will present and evaluate a proposal to abolish the FCC and National Telecommunications & Information Administration (NTIA) in favor of a Cabinet level Department of Communications.

Background

Spectrum scarcity and public interest represent the two major cornerstones for FCC involvement in US broadcast regulation.

Policy in this area has, from the start, been characterized by short-sighted policy action on executive and legislative levels. After allowing the nascent radio industry to flail without regulation through the mid-1920s, Congress was beset by broadcasters to provide some sort of regulatory structure. The FCC's predecessor, the Federal Radio Commission (FRC), was established to act primarily as a "traffic cop" of the airwaves, supervising such matters as spectrum scarcity and station interference.

The Court in NBC v. United States acknowledged broadcast facilities are not large enough to accommodate all who wish to use them, and the Commission would choose among the many who apply. The Supreme Court in Red Lion v. FCC recognized this authority is "...rooted in the fact that a potentially limitless multitude of broadcasters must vie for signals which are transmitted over a limited number of public airwaves" (1969: 367).

Through the late 1970s, however, the courts gradually eroded scarcity rationales in challenges to access, beginning with cable (Midwest Video v. FCC). While scarcity was not central its ruling, the Midwest court noted the "absence of scarcity in the increased number of channels removes the excuse for intrusion" of access in cable (1979: 689). This decision laid the groundwork for subsequent challenges to scarcity applications with broadcasting during the 1980s (FCC v. Women's League of Voters, 1984).

Thus, for cable as well as broadcasting, the courts found the recent proliferation of new technologies had obviated the scarcity

based rationale for regulation. This trend opened the way for further FCC actions to have the marketplace decide such matters as station ownership (FR 21468). The FCC formally disavowed scarcity-based rationales in 1987, suggesting that broadcasters should be given rights comparable to those of print media, where possible (Fairness Report 58 RR 2d 1137).

Another rationale concerning access and fairness rules involved the public's access to information. This argument that "government has an obligation to insure that a wide variety of views reach the public" was also rejected by the court with regard to print media access (Miami Herald v. U.S., 1974: 241). It seems that the access argument is not a sufficient justification for regulation unless coupled with overriding scarcity concerns.

Thus, now that the scarcity based "excuse" for regulation of content and ownership has been alleviated by the new technologies, broadcasters feel they are entitled to the same protection. Commercial broadcasters contend that "the free market acts to regulate industry as well and certainly more cheaply than government can" (RTNDA, 1983: 3).

A Jaundiced Status Quo

Erosion of scarcity-based rationales strikes at the very basis for Commission authority. Successor to the Federal Radio Commission (FRC), the FCC was originally chartered to continue the function of being a "traffic cop" in the allocation of frequencies and judging performance of incumbent broadcasters. With emerging technology, the need to be an instrument of cohesive policy making

has become critical, but the FCC---both by tradition and structure--is ill equipped to do this. A recognition of the FCC's inability to handle the policy making mission was the incentive for the creation of the White House Office of Telecommunications, now the NTIA (Executive Order 120 46, 1978, 43 FR 24348). But the NTIA is not well integrated with the more powerful FCC, and this two-pronged approach has not lead to any improvement in priority telecommunications policy making. Notwithstanding that, the NTIA sought to correct leadership deficiencies in the 672 page book entitled NTIA Telecom 2000, which attempts to project the future of broadcasting and telecommunications.

Even if we assume that the NTIA selects proper policy, there is still absent the essential element of coordination between it, the FCC, and Congress. The NTIA is an in-house think tank without clout or a constituency (Starr, 1988). Out of the mainstream, it can hope to accomplish little on its own. The in-depth policy analysis of the NTIA must be married to the day-to-day regulatory effort of the FCC in a new structure which makes and implements policy. The past 55 years under the 1934 Act should have taught us that we cannot regulate our way into coherent policy.

Coordination in this area will be crucial, in that information gathering and dissemination will be in the 21st century what manufacturing was in the 20th century for this country (Dizard, 1985). American telecommunication firms must compete against subsidized competitors in the race to develop information industries (and the jobs that follow). Absent a definitive

coordinated national approach, there is no way to assure continued international leadership or resolution of the domestic scramble. National telecommunications policy must develop in a way which removes us from a position of simply reacting to what is occurring in the rest of the world. The United States needs to set its own agenda and standards to allow the rest of the world to fit into our plans and not us into theirs. A prime example of the absence of a definitive policy with international and domestic ramifications is the matter of HDTV. By not articulating criteria for the reality of this technological advance, we may, by omission, arrive at a point where another nation's reality is forced upon us. As one commentator noted, nothing less than our future as a first-class country is at stake in the race to develop technologies such as HDTV (Elkin, 1989).

As recent trade reviews (Broadcasting 1988b, 1988c) indicate, groups ranging from telephony to broadcasting have expressed concern with the regulatory status quo. It would seem that the determiners of telecommunications policy on the domestic scene recognize that a fresh approach is more than desirable; it is essential. Clearly, the policy, or non policy, of the FCC has failed.

Each agency, however, is pursuing the problem in a different way. The FCC has put its faith in marketplace determination and abandonment of scarcity as a rationale for regulation. With the communications house in substantial disarray, the FCC approach of hands off a ship which was already drifting has attracted criticism

of spectrum management policies (Ducey, 1988). In the realm of broadcast journalism, this approach can be best characterized by the Fairness Doctrine. Achieving and exalted position as the "sine qua non" for license renewal in 1974 (Fairness Report 30 RR 2d 1261), it descended in 11 short years (1985 Fairness Report 58 RR 2d 1137) to a status of outmoded archaic policy. While courts and other policy determiners played a role in those changes, this regulatory inconsistency was exacerbated by the lack of clear direction from the Commission (Broadcasting,, 1988c).

Still another case study would be the saga of AM stereo. When authorized in 1982 (51 RR 2d 1), the FCC would not make a selection of systems available, preferring instead the marketplace selection. Some six years later, while revisiting the matter, the FCC would still not make a selection (64 RR 2d 516), reaffirming marketplace determination. The fact is, that after six years, only 10% of AM stations have AM stereo (Carter, Franklin Wright, 1988 Supplement). The FCC's marketplace policy implementation method does not appear in this instance to have been very effective in meeting the needs of the public or AM broadcasters.

Perhaps the most fitting final example of the FCC's failure to develop and implement policy is the question of comparative renewal. None of the interested parties are satisfied with the FCC's record on the matter (Broadcasting, 1988d). It is, in fact, a significant matter of policy in the NTIA Telecom 2000 report. The general frustration which exists as a result of the comparative renewal situation is perhaps best summed up by the following

observation contained in the renewal case of Central Florida Enterprises, Inc. vs FCC, 683 F 2d 503 (1982), cert. den., 460 US 1084 (1983).

> We suspect that somewhere, sometime, somehow, some television licensee should fail in a comparative renewal challenge, but the FCC has never discovered such a licensee yet.

These examples are but a few of a 55-year record of vacillation, hesitation, and procrastination. While their roots lie within a lack of coordination among all branches of government, these problems could have been better addressed by clearly defined Commission action. Instead, at the FCC, it would seem that policy has been replaced by paralysis.

This paralysis extends even to the method by which commissioners are chosen. Though its revised charter of sitting members, the FCC has operated with as few as three Commissioners since the mid-1980s. Continuing struggles over appointments to vacant commissioner chairs have only intensified the malaise. In addition, the announced resignations of all three sitting Commissioners leaves a mounting policy agenda in lame duck hands.

In this void created by the FCC's approach, Congress has found it necessary to be the "Court of Appeals" for the FCC (See Broadcasting, 1988c). Forced to assume the role of the Dutch boy with his finger in the dike, Congress in 1988 embarked on heretofore unprecedented initiatives in such specific areas as indecency (e. g. P.L. 98-549, S. 624), children's television (H.R. 3288, Cong. Bruce, 1988), and the Fairness Doctrine (58 R.R. 1137, 1988).

With recent speeches on these matters, Senate Commerce Committee Chairman Ernest Hollings characterized the FCC as an agency run by "youngsters" who function with a "non policy." Hollings felt that a new FCC and a new chairman would lead to policy (Broadcasting, 1988c). While Senator Hollings is right about the "non policy", it is difficult to see how, after past experiences with the FCC, more of the same will produce any results.

Long deferential to the FCC's purported expertise, the Courts have now ceased to function as "knee jerk" ratifiers of FCC policy. A telling example is the Court of Appeals for the D.C. Circuit's dismissal of must carry rules in the case of Century Communications v. Federal Communications Commission, (1987). Here Chief Judge Wald rejected a plea by the FCC to uphold new must carry rules based on the FCC's "sound predictive judgment." This court was rejecting the mystique of "expertise" in favor of empirical support or, in the alternative, "sound reasoning."

If this ruling is an indication or recent judicial sentiment, it seems the courts--like the Congress--are clearly frustrated with the FCC policy making process. To stand the test of judicial scrutiny, future communications policy will require more than its pronouncement by the "expert" FCC.

Even the industry, which should be delighted with the FCC marketplace orientation, has misgivings. Commission initiatives on everything from new service licensing to upgrades have prompted the NAB to ask the FCC to consider what it is doing (Broadcasting, 1988a: 47). As to citizen groups, one can merely take judicial

notice of their regular opposition to the current status in issues ranging from children's TV to cable regulation (Multichannel News, 1988).

Of course, issues such as these often involve mutually exclusive interests, making consensus elusive in the policymaking process. But all could benefit from more carefully coordinated policy making. It is in this climate that a national policy must emerge, and soon. What is that policy to be, and what role is to be played by existing and new technologies? What to do about AM, UHF, LPTV? To develop individual policies, one must identify each's role in the overall spectrum utilization and further determine the role cable is to play. Certainly, there are other continuing problems with non-endangered species of FM and VHF TV. How will the federal government oversee the entry of telcos and emerging technologies such as HDTV, to the fifth estate? (See NAB 1988 Report on ATV).

While some might argue that laissez-faire promotes maximum creativity, ad-hoc decision making by a part-time political commission has contributed to several of the problems broadcasters experience today. Surely, in light of intensified competition from abroad, the time has come to consider alternatives involving industry-government cooperation in the formulation and execution of telecommunication policy.

A POLICY PROPOSAL

Having reviewed the salient shortcomings in FCC regulation of the telecommunication press, it is appropriate to outline an

alternative regulatory model. Such a model should maintain and enforce existing public interest rationales as a justification for government regulation. As recent events indicate, abandoning regulation in favor of market forces does not necessarily assure that interest, and is not even in the general interest of market players. Such an approach might work if all industry interests were, indeed, playing on a level field. Until that level field is achieved, however, the market force concept is premature.

Evaluative criteria

In evaluating alternative models for communication regulation, we limit our focus to a few key areas, beginning with administrative feasibility. Simply put, this refers to the ease with which a policy could be implemented in terms of cost, manpower and supervisory resources. If a policy is to gain adoption at all, however, it must attain a critical measure of political feasibility. As a practical matter, this would involve the likelihood of an initiative gaining congressional and executive- level support. In addition, legal feasibility refers to the degree to which a policy is consistent with the constitution and the previously mentioned tradition of communication regulation. And finally, social desirability is the degree to which a given initiative promotes the public interest.

Steps toward implementation

On the dawning of a new decade and a new administration, it is important, now, to rethink the fundamental aspects of spectrum management. Before allocating the spectrum any further, a freeze

should be applied until a profile of industry health can be attained. Since the Commission, by its very nature, has found it difficult address such problems outside of the short-term, an entire new approach is needed. That is, instead of amending the Communication Act of 1934, the time has come to abandon it.

Such a departure in policy may, in some ways, echo earlier calls to rewrite the Act during the 1970s. Many of those proposals were reform-oriented, and ultimately incorporated into the 1984 Cable Communication Act. In a more sweeping proposal, the Communications Subcommittee of the House Interstate and Foreign Commerce Committee Options Papers report (Committee Print 95-13, 95th Cong., 1st session, 1977) examined avenues for regulatory reform, including a Cabinet-level Department of Telecommunications. Our proposal would take that notion one step further, urging a consolidation of all communications agencies under a single cabinet level Department. Specifically, this would involve abolishing the FCC and NTIA in favor of a Cabinet-level Department of Communications.

In so acting, the government would make communications a coordinated national priority, funding it adequately to employ experts and a professional staff capable of designing and implementing long term strategy in the evolving telecommunication marketplace. The proposal may sound radical in light of the long standing relationships we've had with regulators and the regulated. But, that type of activity is not entirely without precedent. When similar technological advances eclipsed the 1909 Copyright Act, the

law was rewritten in 1976. Thus, a rather sweeping change in technology motivated an equally striking legislative response--one that has proven more serviceable than a series of legislative band-aids. Certainly, the challenges presented by increased global competition are no less important than those prompting copyright and other policy debates of the 1970s.

An equally decisive move needs to be struck in the interest of comprehensive communication policy for the new technologies, as an alternative to the status quo of piecemeal regulation. Similar mechanisms are in place in Japan, where national postal and telegraph authorities take an active role in planning and protecting telecommunication technologies (see Akvahn-Majid, 1989). By raising communication policy to the Department level, the US could better accommodate foreign competition and further safeguard its large stake in the evolving information economy.

In addition to economic efficiencies, a Cabinet level department would likely be less prone to political exigencies. Although agencies were designed to be step removed from the political process, the earlier mentioned personnel problems suggest that this structure has not succeeded with the FCC. Administrative instability can be traced, in large measure, to recurring vacancies on the Commission; such vacancies tend to exist for extended periods of time due to the nature of its very structure. It is important to maintain a more stable base of executive officers--apart from the recurring jurisdictional fights between the executive and legislative branches. A Secretary of Communications

appointed by the president would enable the policy making and regulatory body to function at all times with key personnel.

Such a change would not alter extant political power bases. The party in power would control three out of five existing Commission spots. Senate input would be provided through the confirmation process, as has been the case with other Departments. In this case, the Secretary would be subject to congressional approval and would appear before congressional committees. There is effectively no difference between a Secretary of Communications and a one-seat majority for the party in power. The main benefactor in this case would be the cause of administrative feasibility--in terms of planning, coordination, and accountability.

This approach would be no different from the one recently taken in the areas of energy and veterans' affairs. National communication policy is at least as vital, and should receive the same high level of attention. As with veteran's affairs, a great deal of efficiency could be purchased at minimum cost (i. e. no new building would be necessary, given the FCC's existing physical plant). Even if unforseen cost factors should render the Department approach more expensive than the status, long term cost savings accompanying centralized planning should generate long-term savings. Thus, inasmuch as political feasibility hinges on the question of cost, this proposal is likely to meet with success. It is important, nevertheless, to explore exactly who might benefit and who might suffer under a Department of Communication.

DISCUSSION AND ANALYSIS

As Krasnow, Longley, & Terry (1982) note, the history of broadcast regulation indicates that the key determinants of public policy in this realm include government bodies--the FCC, courts, Congress and White House--as well as industry and citizen action groups. The authors suggest that success in policy making results from coalitions among those groups, as no single entity dominates the regulatory process. Past work has, for example, applied this model to the regulation of children's advertising (Tucker & Saffele, 1982) and programming (Atkin & Lin, 1988). In both cases, Action for Children's Television (ACT) coalitions with the Commission (during the 1970s) and later Congress (during the 1980s) had not been sufficient to enact policy change. Rather, it was broadcasters who were able to dominate the process, effectively moving the FCC, executive branch and courts to accept their deregulatory rationale.

The courts

The legal feasibility of an initiative such as this is dependent, in large part, on the appropriateness of past FCC bases for legislation. As mentioned, the courts have generally recognized the public service rationale as a statutory standard from the time of NBC v. U.S. (1943). Spectrum scarcity is, however, quite a different matter. It has generally been recognized that the FCC moved from League of Women's Voter's criticism of scarcity when dropping the fairness doctrine. In a similar vein, the Commission's 1985 Fairness Report, quoted in

Telecommunications Research and Action Center (TRAC) v. FCC (1986):

...(W)e simply believe that, in analyzing the appropriate First Amendment standard to be applied to the electronic press, the concept of scarcity--be it spectrum or numerical--is irrelevant...[A]n evaluation of First Amendment standards should not focus on the physical differences between the electronic press and the printed press, but on the functional similarities between these two media and upon the underlying values and goals of the First Amendment. We believe that the function of the electronic press in a free society is identical to that of the printed press and that, therefore, the constitutional analysis of government control of content should be no different...]

Delegation of Congressional power to an expert body with power to make policy and regulations premised upon the "public interest" has long been recognized by the Court (NBC v. U.S., 1943). In point of fact, it will make little difference if the repository of this authority becomes an executive department instead of an executive agency. Within the proper framework, there is not a predictable judicial objection to the establishment of a Department of Communication. As noted in the 1974 Fairness Statement (upheld by the courts), the concept that government need only adopt a laissez-faire attitude toward competing interests has never been accepted in broadcasting. In fact, with scarcity gone as a basis for electronic media regulation, the need for a complete review of Communications interrelationships leading to a national policy is more important than ever.

Despite the erosion in scarcity as a rationale for regulation, the courts would likely find support for the notion of a Cabinet level Department on public interest grounds. For, although Red Lion has been partially compromised with the elimination of such rules as Fairness, public interest rationales have not yet faced

any serious legal challenges.

Citizen's groups

A wide range of citizen's groups have influenced government policy. They range from Action for Children's Television (ACT) to Accuracy in Media (AIM). To nationally-based groups such as these we can add a list of local media access organizations. As Owen, Beebe & Manning (1974) note, these groups can be distinguished by the following traits:

> 1) a lower capital base, 2) non-mainstream cultural orientation, 3) greater dependency upon or inclination towards locally originated programming (:111).

Thus, locally-based groups typically represent a nontraditional broadcast orientation. In general, citizen's groups have been on the defensive in recent years. The president recently vetoed an ACT-supported bill to limit commercial content during children's programming (despite NAB support for the measure) (Broadcasting, 1988b). AIM, a long-time supporter of the Fairness Doctrine, was dealt a setback when the measure was vacated. And, in the area of cable, the National League of Cities (NLC) lost its bid to regulate basic rates in the 1984 Cable Communication Policy Act. The League is so upset with rising rates that it will now support legislation allowing telco ownership of cable systems (Multichannel News, 1988).

These are but a few of the recent setbacks that have likely reinforced citizen group concerns that they lack the money and ex-parte contacts to vie for influence with the FCC. As has been noted in the area of access.

Although the public possess a paramount right of access to information in the electronic forum (Red Lion, 1969) access rights arose only upon the presentation of a controversial view on an issue of public importance (Fairness Report 30 RR 2d 1261, 1974), broadcast of a personal attack (48 CFR 73 1920, 1977), or appearance of a legally qualified candidate (97 USC 315, 1977; see Lively, 1980).

In the debate over scarcity, access proponents argue that, despite increases in actual media outlet numbers, the diversity of ideas which they promote has not increased appreciably. If anything, recent changes in multiple ownership rules, relaxation of duopoly rules and allowances of corporate mergers have probably increased viewpoint scarcity and ownership access. Access groups (Freidland, 1981) contend that the relative scarcity of channels justifying government regulation is even more pervasive now than when there where only one-tenth as many stations available.

Such groups, not doubt, support the Red Lion contention that the broadcaster's need to express himself, with a government license unavailable to the vast majority, defies the meaning of individual self expression by creating a prolonged oligopoly of powerful speakers. Though quantitative access to this "oligopoly" may have been widened somewhat through new technology development, barriers to access still limit media involvement to a relatively small portion of society. For most, freedom of the press is guaranteed only for those who can afford one (Liebling, 1974). Such groups would welcome an accountable executive department to which they could voice their concerns, even though they may not always prevail.

The FCC

It is perhaps easiest to forecast the Commission's likely response to a Department of Communication--outright opposition. For, as Krasnow et al. note, the FCC is "more than just an independent regulatory commission wrestling with the problem of its political non independence; it is also a bureaucracy" (1982: 35). Just as few governments can be expected to vote themselves out of existence, we anticipate the Commission would oppose its own elimination. As former FCC Commissioner Lee Loevinger notes, the first step toward realistic understanding of bureaucratic decision making is a recognition that the power motive is to bureaucracy what the profit motive is to business (cited in Krasnow et al., 1982).

The Congress

As is the case with any representative body, we could expect a wide range of opinions on the matter of a new Department. As mentioned earlier, the cable industry is likely to oppose this move. We might, then, expect that cable-oriented Senators (e.g. Timothy Wirth) would oppose the measure. But several of these Congressmen are also favorably disposed towards citizen's group agendas (e.g. Wirth's support of ACT). In a clash between the two, these representatives would probably favor the citizen's groups.

On the other hand, representatives of broadcast industry and other citizen's groups would lobby their champions to back such a measure. Additionally, one swing variable might involve the disposition of solution-oriented activists such as Earnest

Hollings, who has voiced concern over the non policy bent of the FCC. Hollings is a recognized leader on communications matters, as indicated by his support of Fairness, transfer taxes and other broadcast issues (Broadcasting, 1988c); his support on communications matters could be pivotal to the proposed policy.

More generally, the structural orientation of this measure is likely to appeal also to regulation-oriented Democrats, who represent an important element in their party's control over both Congressional houses. Such a proposal should also appeal to moderate Republicans, who will likely be Bush's congressional leaders, as conservative Republicans were, for Reagan.

White House

President Reagan promised in the 1980 election to eliminate two Cabinet level departments, Energy, and Education. Not only was that not done, a new one, the Department of Veteran's Affairs was added, and a Cabinet level "Drug Czar" was contemplated. While the motivation for these moves may have been mostly political, the fact remains that the White House over the years, whatever the administration, has been receptive to a consolidation of power and responsibilities to address perceived national problems.

The present Department of Communication proposal would fall to consideration by President Bush. The degree of presidential involvement in telecommunication issues has varied with the office holder, and attitudes have ranged from an "activist" President Johnson to a "disinterested" President Reagan.

What are we to expect new with President's Reagan's successor?

Nothing in President Bush's record indicates any particular interest in telecommunications. However, early indications are that he will be a more "activist" president than his predecessor (See Wall Street Journal, 1988). Bush would seem to have a predisposition to deal with accumulated neglected items on the national agenda, examples being education, deficit, and day care. The President Elect also seems intent upon reestablishing a working relationship with Congress.

Therefore, the climate may favor support for this proposal from the new Administration, with the prospects improving should there be any indication of Congressional interest. For the present, though, we would expect to find a "wait and see" attitude from the administration. At a minimum, outright opposition to this proposal is highly unlikely.

Industry

The broadcasting industry today is not the monolithic entity which was in place when the FCC was born in 1934. The NAB would appear to be the natural consistency for marketplace determination. And perhaps, in 1981, as the ecstacy of deregulation swept the country, it was. It may be that the NAB is the first segment of the industry "to sober up after the party." Unbridled enthusiasm at the NAB has given way to certain, and counter proposals (See Cohen, 1988). Caution was demonstrated in the early summer NAB report questioning whether all the new service planned by the FCC was in the public interest, and whether more was really better. The FCC plan to increase power of all Class A FM from 3 kw to 6 kw

was greeted by a more limited NAB counter proposal (Carter et al., 1989). This NAB wants planning and well reasoned policies, which, from its recent reaction, you would have to conclude it is not getting. We might, then, contemplate industry support for abolition of the very FCC which,according to some critics, is in the industry hip pocket.

Where NAB support is questionable, very certain support will come from the specialized trade organizations which arose to protect interests disadvantaged by FCC action or inaction. Any such listing would have to include, for example, the INTV, the Association of Maximum Service Telecasters, the National Radio Broadcasters Association, and the National Association of Black Owned Broadcasters. To this we must add newer offshoots--including home dish and satellite master antenna retailers--who have been hurt by discriminatory pricing by cable distributors.

Apart from the broadcast industry, support might also be expected from telephone companies hoping to achieve entry into new service areas such as cable. They could even move into a coalition with cities, who seem anxious to "spank" multiple system operators in the wake of 100+ percent price increases for basic cable since rates were deregulated as part of the 1984 cable act (Multichannel News, 1988). Congress will be debating the merits of telco-delivered programming during the 1989 session.

For those same reasons, the cable industry will be apprehensive about any changes in communication policy. They might well oppose this proposal on the theory that any new structure

which could result in a review of cable industry status is to be viewed with suspicion with the NCTA, and the MSO's--both big winners after the Cable Telecommunication Act of 1984. In short, this segment of the "industry" has the most to gain by perpetuation of the status quo.

On balance, the "critical mass" of fifth estate interests would welcome the change to a cabinet level department. Such a Department would signify a higher priority to be placed on telecommunications policy, with a resulting qualitative improvement in policy development.

CONCLUSION

In sum, we would anticipate that a coalition of Congress, selected industry groups, the courts and citizen's groups could effect the implementation of a Cabinet-level department. These groups could likely prevail over the FCC, the most powerful source of opposition to such an arrangement. The wider consensus should emerge despite the antagonistic relationship of certain groups within the coalition (e. g. citizen's groups and broadcasters), as all might benefit from coordinated planning. And, while the executive branch may not be a natural constituency in favor of such regulation, Bush may exploit this opportunity to seek rapprochement with the Democratically controlled Congress. Both branches now realize that all interests could be better served by a body that is less ideological and more pragmatic than the FCC under Reagan.

Of course, a Department of Communication would not represent a panacea for all communication policy problems. But, as events

of the past two decades suggest, consistent policy cannot emerge from sporadic decisions of uncoordinated federal agencies. We have suggested a rather extreme solution to this problem--eliminating the FCC and NTIA in favor of a Cabinet level Department of Communications. This proposal is based on the realization that committees and commissions complicate the process of policy making. Consensus is never wise long-term planning. As other countries attempt to close their "technology gaps" with the US, we continue to deal with pieces of the puzzle without any idea of what the puzzle ought to look like. As AT&T's Robert Allen notes, "America is writing the story of the 21st century" with it's telecommunication industries--but this lead is now threatened by coordinated, subsidized foreign competitors; "regulatory sense and legal sense do not have to be at odds with common sense" (1989). In short, the situation cries for action, as the industry and the public--who are both at risk--must petition the Congress and the new President to review telecommunication regulations as a priority matter.

BIBLIOGRAPHY

Akhavan-Majid, R. (1989). Telecommunications Policy-making in Japan: 1980's and beyond. Telecommunications Policy, forthcoming.

AM Stereophonic Broadcasting (1982). 51 RR 2d. 1

AM Stereophonic Broadcasting (1988). 64 RR 2d 516.

Allen, R. (1989). Comments on the US information industry. CSPAN, February 18.

Atkin, D. & Lin, C. (1988). Children's programming reconsidered. Communications and the law, 10, 3.

Broadcasting Magazine (1988a). NAB shies from a crowded marketplace. July 4, 47.

Broadcasting Magazine (1988b). Where things stand. November 7, 1988, 19

Broadcasting Magazine (1988c). FCC under congressional fire. December 5, 42.

Carter, T.B., Franklin, M.A., & Wright, J.B. (1986). The First Amendment and the Fifth Estate. Mineola, N.Y.: The Foundation Press, Inc.

-----1988 Supplement (1988). Mineola N.Y.: The Foundation Press, Inc.

Central Florida Enterprises, Inc. v. FCC (1982). 683 F. 2d. 503, cert. den. 460 U.S. 1084.

Century Communications v. FCC (1987). D.C. Cir. 835 F.2d 292, 64 RR 2d 113.

Dizard, W.P. (1985). The Coming Information Age. New York: Longman Inc.

Elkin, M. (1989). Interview, All Things Considered, Feb 10, 1989.

Fairness Report (1974). In the matter of handling Public Issues under the Fairness Doctrine and the Public Interest Standard of the Communication Act, 48 FCC 2d 1, 19; 30 RR 2d 1261.

Fairness Report (1985). 58 RR 2d 1137.

47 C.F.R. 73 1920 (1977).

47 U.S.C. 315 (1977).

FCC v. Women's League of Voters (1984). 468 U.S. 364, 104 S.Ct. 3106, 82 L.Ed. 2d 278, 10 Med.L.Rptr, 1937.

Friendland, L. (1981). FCC clears the way for low-power TV. Clearing the Air, May, 1.

Krasnow, E., Longley, C. & Terry, H. (1982). The Politics of Broadcast Regulation. 3rd edition, New York: St. Martins.

Liebling, A.J. (1974). The Press in America. New York: Random House.

Lively, D. (1980). Denver Law Journal, 46,1. pp. 17-34.

Miami Herald v. Tornillo (1974). 418 U.S. 241.

Midwest Video v. F.C.C. (1979). 440 U.S. 689.

Multichannel News, ed. (1988). League of cities panel backs Telcos. October 24, 1988, 5.

NAB 1988 Report on ATV. Washington D.C. January 21, 1989.

National Broadcasting Company v. U.S. (1943). 319 U.S. 190, 1 Med.L.Rptr, 1965.

NTIA Exective Order 120 46, 1978, 43 F.R. 24348.

National Telecommunications and Information Administration (1988). NTIA Telcom 2000. Washington D.C.: U.S. Department of Commerce.

Owen, R., J. Beebe, & T. Manning (1974). Television Economics. Lexington Mass: Heath Co., p. 111

Pepper, R. (1988, Nov.). Through the looking glass. Office of Plans and Policy (Working paper #25), Washington, D.C.

Radio and Television News Directors Association (RTNDA) (1983). Annual Convention Program, Las Vegas.

Red Lion Broadcasting Co. v. FCC (1969). 395 U.S. 367, 389, 90.

Starr, M. (1989). The department of communication. Broadcasting., December 26, p. 20.

Telecommunications Research and Action Center v. FCC (1986). 801 F.2d. 501, 61 R.R.2d 330, 13 Med.L.Rptr. 1881; cert. den. 107 S.Ct. 3196 (1987).

Tucker J. & Safelle, T. (1982). The federal communications commission and the regulation of children's television. Journal of Broadcasting, 26, 657.

Wall Street Journal (1988). Gauging the Bush administration. December 14, 1988.